

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE CLASSMATES.COM
CONSOLIDATED LITIGATION

No. CV09-45RAJ

**STIPULATED MOTION FOR
PROTECTIVE ORDER REGARDING
THE HANDLING OF
CONFIDENTIAL MATERIAL AND
[PROPOSED] PROTECTIVE ORDER
REGARDING THE HANDLING OF
CONFIDENTIAL MATERIAL**

NOTE ON MOTIONS CALENDAR:
October 9, 2009

STIPULATION

THE PARTIES STIPULATE AND AGREE and hereby move the Court for the entry of the below [Proposed] Protective Order governing the use and disclosure of certain materials discovered in this consolidated lawsuit. Good cause exists for the entry of the below Order because, as the parties acknowledge and agree, discovery in this consolidated lawsuit will result in the production of, among other things, highly confidential and proprietary commercial information, trade secrets, and sensitive personal information. On that basis, the parties jointly request that the Court enter the following Protective Order Regarding the Handling of Confidential Material in this action.

[PROPOSED] PROTECTIVE ORDER

THIS MATTER came before the Court on the agreed motion of Plaintiffs and Defendants for entry of a Protective Order Regarding the Handling of Confidential Material. Having considered the parties' stipulation and the other pleadings and papers filed in this matter, and to protect the confidentiality of commercial information and sensitive personal information contained in documents produced and information disclosed in this litigation,

IT IS HEREBY ORDERED that the following Protective Order be entered in this matter and that the Parties shall follow the procedures set forth below with respect to information, documents, or things produced in this litigation:

1. This Order shall be applicable to and govern all depositions, documents, information or things produced in response to requests for production of documents, answers to interrogatories, responses to requests for admission and all other discovery taken pursuant to the Federal Rules of Civil Procedure, as well as testimony adduced at trial, matters in evidence and other information which the disclosing party designates as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" hereafter furnished, directly or indirectly, by or on behalf of any party or any non-party witness in connection with this action. As used herein, "disclosing party" shall refer to the parties to this action or to third parties who give testimony or produce documents or other information.

2. "ATTORNEYS' EYES ONLY" material shall consist of information that the disclosing party and its counsel believe in good faith contains proprietary information (in document form or otherwise), including but not limited to material constituting or containing trade secrets or other confidential research, design, development, or commercial information, that the disclosing party reasonably believes is of such a nature and character that unlimited

1 disclosure of such information to the receiving party will be harmful to the disclosing party or to
2 its business or will provide the receiving party a competitive advantage over the disclosing party.
3 The parties agree that this designation shall be used sparingly and only for the purpose of
4 protecting truly proprietary information.

5
6 3. "CONFIDENTIAL" material shall be limited to other non-public, proprietary
7 information that the disclosing party and its counsel reasonably believe is sensitive, but not so
8 sensitive as to require protection under paragraph 2 above, whether embodied in physical
9 objects, documents, or the factual knowledge of persons.

10 4. This Order shall apply to all ATTORNEYS' EYES ONLY and CONFIDENTIAL
11 material in all answers, responses, documents or deposition testimony, as well as in all pleadings,
12 discovery papers, briefs, summaries, notes, abstracts, or other documents which comprise,
13 embody, summarize, discuss or quote from any such answers, responses, documents or
14 deposition testimony, including memoranda or work product prepared by counsel, their staff, or
15 authorized outside consultants or experts.
16

17 5. In designating information as "ATTORNEYS' EYES ONLY" or
18 "CONFIDENTIAL," a disclosing party shall make such a designation only as to materials which
19 it in good faith believes is confidential or deserving of attorneys' eyes only treatment. A
20 "ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" material designation shall be used by
21 the parties to this litigation and designating third parties solely for the purpose of conducting this
22 litigation, but not for any other purpose whatsoever.
23

24 6. In the absence of written permission from the disclosing party, or an order of the
25 Court, information designated as "ATTORNEYS' EYES ONLY" material shall be used solely
26 for the purposes of this litigation, and may not be disclosed except to the following persons:

1 (a) The attorneys working on this action on behalf of any party, and the staff,
2 stenographic and clerical employees and contractors working under the direct supervision
3 of such counsel;

4 (b) Any expert or consultant not employed by a party who is expressly
5 retained or sought to be retained by any attorney described in paragraph 6(a) to assist in
6 preparation of this action for trial, with disclosure only to the extent necessary to perform
7 such work. Such experts and consultants shall not be current employees of a party or
8 employed by a party within six (6) months prior to the disclosure of any "ATTORNEYS'
9 EYES ONLY" material;
10

11 (c) Any person from whom testimony is taken, except that such person may
12 only be shown copies of "ATTORNEYS' EYES ONLY" material in preparation for or
13 during his/her testimony, and may not retain any such material; and
14

15 (d) The Court, jury, court personnel, court reporters, and other persons
16 connected with the Court.

17 7. In the absence of written permission from the disclosing party, or an order of the
18 Court, information designated as "CONFIDENTIAL" shall be used solely for the purpose of this
19 litigation, shall not be used for any other purpose, and may not be disclosed except to the
20 following persons, as set out below:
21

22 (a) The attorneys working on this action on behalf of any party or class,
23 including staff, stenographic and clerical employees and contractors working under the
24 direct supervision of such counsel;
25
26

1 (b) Any person not employed by a party who is expressly retained or sought
2 to be retained by any attorney described in paragraph 7(a) to assist in preparation of this
3 action for trial, with disclosure only to the extent necessary to perform such work;

4 (c) Employees of a party who are required by such party to work directly on
5 this litigation, with disclosure only to the extent necessary to perform such work;
6

7 (d) Any person of whom testimony is taken, except that such person may only
8 be shown copies of "CONFIDENTIAL" material in preparation for and during his/her
9 testimony, and may not retain any such "CONFIDENTIAL" material, EXCEPT that
10 expert witnesses and/or trial consultants as described in Paragraph 7(b) above may retain
11 "CONFIDENTIAL" material as necessary for the purpose of their engagement during the
12 period of the litigation; and
13

14 (e) The Court, jury, court personnel, court reporters, and other persons
15 connected with the Court.

16 8. The persons described in paragraphs 6(b)-(c) shall have access to
17 "ATTORNEYS' EYES ONLY" material and the persons described in paragraphs 7(b)-(d) shall
18 have access to "CONFIDENTIAL" material only after they have been made aware of the
19 provisions of this Order and have manifested their assent to be bound thereby by signing a copy
20 of the annexed "ACKNOWLEDGMENT." By signing such "ACKNOWLEDGMENT," each
21 individual who receives any "ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" material
22 hereby agrees to subject himself/herself to the jurisdiction of this Court for the purpose of any
23 proceedings relating to the performance under, compliance with or violation of this Protective
24 Order.
25
26

1 9. The recipient of any “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL”
 2 material as provided under this Order shall maintain such information in a secure and safe area
 3 and shall exercise the same standard of due and proper care with respect to the storage, custody,
 4 use and/or dissemination of such information as is exercised by the recipient with respect to its
 5 own confidential information. “ATTORNEYS’ EYES ONLY” and “CONFIDENTIAL”
 6 material shall not be copied, reproduced, summarized or abstracted, except to the extent that such
 7 copying, reproduction, summarization or abstraction is reasonably necessary for the conduct of
 8 this lawsuit. All such copies, reproductions, summaries, extractions, and abstractions shall be
 9 subject to the terms of the Order, and labeled in the same manner as the designated material on
 10 which they are based.
 11

12 10. Disclosing parties shall designate “ATTORNEYS’ EYES ONLY” or
 13 “CONFIDENTIAL” material as follows:
 14

15 (a) In the case of documents, interrogatory answers, responses to requests to
 16 admit, and the information contained therein, designation shall be made by placing the
 17 following legend on every page of any such document prior to production:
 18 “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL.” If a party inadvertently fails to
 19 stamp or otherwise designate a document or other information as “ATTORNEYS’ EYES
 20 ONLY” or “CONFIDENTIAL” at the time of its production, that party may at any time
 21 thereafter stamp or otherwise designate in writing the document or other information as
 22 “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL.” Such document or other
 23 information shall be treated as “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL”
 24 consistent with its designation beginning at the time of such designation.
 25
 26

(b) In the case of depositions, designation of the portion of the transcript (including exhibits) which contain “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” material shall be made by a statement to such effect on the record in the course of the deposition or, upon review of such transcript, by counsel for the party to whose “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” material the deponent has had access. Counsel for either party has fourteen (14) days after counsel’s receipt of the transcript to designate in writing with notice to all other parties, and the court reporter, material referenced in or attached to a deposition transcript as “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL.” During those fourteen days, the entire deposition transcript, including exhibits, shall be deemed “CONFIDENTIAL,” and shall be handled accordingly by all parties and their counsel, unless during the deposition counsel states that information raised at the deposition is “ATTORNEYS’ EYES ONLY” in which case that portion of the deposition identified by counsel shall be treated as “ATTORNEYS’ EYES ONLY” for the fourteen day period.

(c) Any “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” material produced in a non-paper media (e.g., videotape, audiotape, computer disks, etc.) may be designated as such by labeling the outside of such non-paper media, or the e-mail transmitting it, as “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL.” If a receiving party generates any “hard copy,” transcription, or printout from any such designated non-paper media, such party must treat each copy, transcription, or printout as designated and label it in a manner effective to ensure proper treatment.

11. A party shall not be obligated to challenge the propriety of an “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” designation at the time made, and failure to do so shall

1 not preclude a subsequent challenge thereto during the pendency of this litigation. If any party to
 2 this litigation disagrees at any stage of these proceedings with such designation, such party shall
 3 provide to the producing or third party written notice of its disagreement with the designation.

4 The parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute
 5 cannot be resolved, the party challenging the designation may request appropriate relief from the
 6 Court, but in any event, such relief from the Court shall not be requested before seven (7) days
 7 after the producing party or third party is served with said written notice; provided, however, that
 8 any challenge to the propriety of a designation by a third party shall be brought in the court from
 9 which the subpoena to the third party was issued. The burden of proving that information has
 10 been properly designated as "ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" is on the
 11 party making such designation.
 12

13
 14 12. Any party filing "ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" material
 15 with the Court (whether in pleadings, declarations, exhibits, or otherwise) will first determine,
 16 prior to filing any motion to seal, and in consultation with the designating party, as appropriate,
 17 whether the document may be filed in redacted form. If, however, redaction is not feasible based
 18 on the nature of the document or the purpose of it being submitted to the Court, either prior to or
 19 contemporaneously with such filing, the party relying on the document shall file a motion to seal
 20 any "ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" material in accordance with Local
 21 Rule 5(g), regardless which party has designated the materials as such. Such a motion to seal
 22 shall be noted for consideration seven (7) judicial days after filing in accordance with Local Rule
 23 7(d)(2)(H). The party filing the motion to seal shall, in compliance with Rule 5(g), include an
 24 explanation of why redaction is not feasible or sufficient, an explanation justifying sealing the
 25 designated documents, and a declaration or affidavit in support of the motion to seal, as may be
 26

1 necessary. If any documents or information included in the court filing were designated
2 “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” by a non-moving party, that party may
3 file a response in support of the motion to seal no later than three (3) judicial days before the
4 note date showing why such materials should be sealed under Local Rule 5(g).

5
6 13. The Clerk of Court is directed to maintain under seal all documents and all
7 transcripts of deposition testimony filed with this Court in this litigation by any party which are,
8 in whole or in part, designated as “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL,”
9 including all pleadings, deposition transcripts, exhibits, discovery responses or memoranda
10 purporting to reproduce or paraphrase such information, PROVIDED that such documents are
11 ordered sealed by the Court or are the subject of a pending motion to seal. The party filing such
12 material shall designate to the Clerk that all or a designated portion thereof is subject to this
13 Order and is to be kept under seal. A complete, unredacted set of documents filed under seal
14 shall be provided by the filing party to opposing counsel the same day the documents are filed.
15 As soon as practicable, but in no event later than ten (10) calendar days after having filed paper
16 copies of the materials submitted under seal, the submitting party shall electronically file with
17 the court, for its public file, a copy of the submitted materials with the “ATTORNEYS’ EYES
18 ONLY” or “CONFIDENTIAL” material redacted.
19

20
21 14. If the Court denies a motion to seal documents containing “ATTORNEYS’ EYES
22 ONLY” or “CONFIDENTIAL” material, the sealed document will be unsealed unless the court
23 orders otherwise, or unless the party filing such material, after notifying the opposing party
24 within two (2) judicial days of the court’s order, files a notice to withdraw the documents in
25 accordance with Local Rule 5(g)(5). If the filing party withdraws the “ATTORNEYS’ EYES
26

1 ONLY” or “CONFIDENTIAL” material, the parties shall not refer to the withdrawn materials in
2 any pleadings, motions and other filings, and the Court will not consider it.

3 15. If any “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” material is used in
4 any court proceeding in connection with this litigation, it shall not lose its “ATTORNEYS’
5 EYES ONLY” or “CONFIDENTIAL” status through such use, and the parties shall take all steps
6 reasonably required to protect its confidentiality during such use.
7

8 16. If “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” material is disclosed to
9 any person other than in the manner authorized by this Order, the person responsible for the
10 disclosure must immediately bring all pertinent facts relating to such disclosure to the attention
11 of counsel for the designating party and, without prejudice to any other rights and remedies of
12 the parties, make every effort to prevent further disclosure by it or by the person who was the
13 recipient of such information.
14

15 17. Nothing in this Order shall preclude any party to the lawsuit or their attorneys (a)
16 from showing a document designated as “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL”
17 to an individual who either prepared the document prior to the filing of this action, or is
18 identified on the face of the document as an addressee or copy addressee, or (b) from disclosing
19 or using, in any manner or for any purpose, any information or documents from the party’s own
20 files which the party itself has designated as “ATTORNEYS’ EYES ONLY” or
21 “CONFIDENTIAL.”
22

23 18. This Order does not prohibit the use or disclosure of “ATTORNEYS’ EYES
24 ONLY” or “CONFIDENTIAL” material obtained from an independent source even if such
25 material is designated as “ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” under this
26 Order. Where such information is obtained from another source and is additionally contained in

1 materials designated "ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" under this Order,
2 the specific material provided by the disclosing party that the receiving party does not have from
3 an independent source shall be maintained as "ATTORNEYS' EYES ONLY" or
4 "CONFIDENTIAL."

5
6 19. Within sixty (60) days of the termination of litigation between the parties, all
7 "ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" material and all copies thereof shall be
8 returned to the party which produced it or shall be destroyed. For "ATTORNEYS' EYES
9 ONLY" or "CONFIDENTIAL" material saved on backup media in an electronically stored
10 format, this material will be certified to have complied with the sixty (60) day period if the
11 receiving party has a data destruction policy for the backup media resulting in the eventual
12 destruction or overwriting of the electronically stored information. Counsel for each party shall
13 be entitled to retain all pleadings, motion papers, legal memoranda, correspondence and work
14 product.
15

16 20. Except as specifically provided herein, the terms, conditions, and limitations of
17 this Order shall survive the termination of this action.

18 21. Subject to paragraph 14, this Protective Order is without prejudice to the right of
19 any party to seek relief from the Court, upon good cause shown, from any of the provisions
20 contained herein.
21

22 22. This Protective Order shall not be construed as waiving any right to assert a claim
23 of privilege, relevance, over-breadth, burdensomeness or other grounds for not producing
24 material called for, and access to such material shall be only as otherwise provided by the
25 discovery rules and other applicable law.
26

DATED this 9th day of October, 2009.

KELLER ROHRBACK L.L.P.

By /s/Amy Williams-Derry

Mark A. Griffin, WSBA #16296
Amy Williams-Derry, WSBA #28711
Shane P. Cramer, WSBA #35099
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Tel: (206) 623-1900
Fax: (206) 623-3384
mgriffin@kellerrohrback.com
awilliams-derry@kellerrohrback.com
scramer@kellerrohrback.com

Brian S. Kabateck
Richard L. Kellner
Joshua H. Haffner
KABATECK BROWN KELLNER LLP
644 South Figueroa Street
Los Angeles, CA 90017
Tel: (213) 217-5000
Fax: (213) 217-5010
bsk@kbklawyers.com
rlk@kbklawyers.com
jhh@kbklawyers.com

Interim Class Counsel

DLA PIPER LLP (US)

By: /s/ Russell B. Wuehler (with permission)

Stellman Keehnel, WSBA No. 9309

Russell B. Wuehler, WSBA No. 37941

DLA Piper US LLP

701 Fifth Avenue, Suite 7000

Seattle, WA 98104

(206) 839-4800

(206) 839-4801 (fax)

stellman.keehnel@dlapiper.com

russell.wuehler@dlapiper.com

Attorneys for Defendants

Classmates Online, Inc.,

Classmates Media Corporation and

United Online, Inc.

**ACKNOWLEDGMENT TO BE BOUND BY PROTECTIVE ORDER REGARDING THE
HANDLING OF CONFIDENTIAL MATERIAL**

IN RE CLASSMATES.COM CONSOLIDATED LITIGATION, No. CV09-45RAJ

I, _____, have received and read a copy of the
STIPULATED MOTION AND PROTECTIVE ORDER REGARDING THE HANDLING OF
CONFIDENTIAL MATERIAL (the "Protective Order") entered by the Court in this action.

I hereby acknowledge and agree to be bound by the terms of the Protective Order.

I further acknowledge that by signing this Acknowledgement, I agree to subject myself to
the jurisdiction of this Court, the United States District Court for the Western District of
Washington, for the purpose of any proceedings relating to the performance under, compliance
with or violation of this Protective Order.

Signed _____

Print Name _____

Dated _____

IT IS SO ORDERED.

DATED this ____ day of _____, 2009.

The Honorable Richard A. Jones
United States District Judge

PRESENTED BY:

KELLER ROHRBACK L.L.P.

By: /s/ Amy Williams-Derry
Mark A. Griffin, WSBA #16296
Amy Williams-Derry, WSBA #28711
Shane P. Cramer, WSBA #35099
1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Tel: (206) 623-1900
Fax: (206) 623-3384
mgriffin@kellerrohrback.com
awilliams-derry@kellerrohrback.com
scramer@kellerrohrback.com

Brian S. Kabateck
Richard L. Kellner
Joshua H. Haffner
KABATECK BROWN KELLNER LLP
644 South Figueroa Street
Los Angeles, CA 90017
Tel: (213) 217-5000
Fax: (213) 217-5010
bsk@kbklawyers.com
rlk@kbklawyers.com
jhh@kbklawyers.com

Interim Class Counsel

DLA PIPER LLP (US)

By: /s/ Russell B. Wuehler (with permission)

Stellman Keehnel, WSBA No. 9309

Russell B. Wuehler, WSBA No. 37941

DLA Piper US LLP

701 Fifth Avenue, Suite 7000

Seattle, WA 98104

(206) 839-4800

(206) 839-4801 (fax)

stellman.keehnel@dlapiper.com

russell.wuehler@dlapiper.com

Attorneys for Defendants

Classmates Online, Inc.,

Classmates Media Corporation and

United Online, Inc.